

# EXHIBIT H

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

NICHOLAS MCKEE, Individually and on  
behalf of all other persons similarly  
situated,

Plaintiff,

vs. C.A. NO. 1:12-cv-01117-SLR-MPT

PETSMART, INC.,

Defendant.

(Caption continued on page 2)

VIDEO DEPOSITION OF: KATHLEEN ANN SHIVELY

DATE: August 15, 2013

TIME: 9:11 a.m.

LOCATION: A. William Roberts, Jr.  
& Assocs.  
33 Market Point Drive  
Greenville, SC 29607

TAKEN BY: Counsel for the Defendant

REPORTED BY: AMY R. COPE,  
Court Reporter

1 Q. Right.

2 A. -- I would just move people based on  
3 where Jodi wanted them.

4 Q. Okay. So -- but that was your process,  
5 you set up the schedule, whether it was auto-run  
6 and then you made some movements. Were you  
7 responsible for setting the schedule?

8 A. I was responsible for moving people  
9 where Jodi wanted them.

10 Q. So Jodi did the schedule?

11 A. Jodi would tell me where to move  
12 people. If she wanted a specific person for  
13 pricing or a specific person for stocking, then I  
14 would move them.

15 Q. Well, let's focus then on manager  
16 schedules. Did you set your schedule and Jodi's  
17 schedule?

18 A. No.

19 Q. Who did that?

20 A. Jodi.

21 Q. So let -- did your schedule fluctuate?

22 A. Some, yes.

23 Q. What was your typical schedule?

24 A. I guess it depended on what happened in  
25 the store. Sometimes I would close one or two

1 nights and sometimes I would be there to bring a  
2 truck in.

3 Q. Well, did you have a typical schedule  
4 even though on occasions you might have to work  
5 late or come in early?

6 A. I did have a typical, like, I would  
7 close Monday nights.

8 Q. Okay.

9 A. Work Tuesday and Wednesday. Thursday,  
10 I would usually bring the truck in and work the  
11 schedule. And then Sunday mornings, I would come  
12 in early and work stock.

13 Q. So you worked Monday to close, Tuesday,  
14 Wednesday --

15 A. During the day.

16 Q. -- during the day.

17 A. I might close on Tuesday, that  
18 fluctuated.

19 Q. So on Monday, what were your hours?

20 A. 12:00 to 10:00.

21 Q. Tuesday and Wednesday, what were your  
22 hours?

23 A. Tuesday could fluctuate, I could close  
24 12:00 to 10:00 or I could work 8:00 to 6:00.

25 Q. And Wednesday?

1 Q. Did you have to go through a final  
2 certification process when you became an operations  
3 manager?

4 A. I don't recall. I took Get Smart  
5 11 years ago, this is not dated 11 years ago.

6 Q. So do you have any reason to dispute  
7 that this is how operations manager have been  
8 trained over the last three years --

9 A. I have no reason to dispute that.

10 Q. All right. Well, let's look at the  
11 third page of Exhibit 7. This module describes the  
12 job functions of the operations manager. The first  
13 bullet point is front end operations, including  
14 opening and closing the store. Were those your  
15 responsibility as the operations manager?

16 A. Sometimes.

17 Q. And register functions, you were  
18 trained on how the register functions, correct?

19 A. As is all cashiers, anyone who was on  
20 the register.

21 Q. How often would you be on the register?

22 A. Every day.

23 Q. Every day for how long?

24 A. Sometimes 15 minutes, sometimes 20.

25 Throughout the day it would be different amounts of

1 times, sometimes a couple of hours.

2 Q. So you're saying there would be days  
3 when, as an operations manager in the store, you  
4 would be on the register for a couple of hours?

5 A. Yes.

6 Q. Okay. What would be the average amount  
7 of time that you would spend on the register during  
8 any particular shift that you worked as an  
9 operations manager?

10 A. It would depend on how busy we were.  
11 Sometimes it would be a half an hour at a time,  
12 sometimes it would be 15 minutes, sometimes -- if  
13 we had someone out sick, it could be four hours.

14 Q. So there was no average?

15 A. There was really no -- it could depend  
16 on the day.

17 Q. It could be 15 minutes in the day or it  
18 could be four hours in the day?

19 A. It could be.

20 Q. Now, when you were on the register,  
21 would you have a code that you would have to put  
22 into the register to identify who you were so it --

23 A. Yes.

24 Q. -- so we could go to the system to  
25 determine how long you were actually on a register?

1 A. Yeah, you sure could.

2 Q. And that would determine -- we would be  
3 able to determine whether you were ever on the  
4 register four hours, right?

5 A. Yes, you absolutely could, and you'll  
6 find it.

7 Q. Okay. The next function in the  
8 operations manager certification is CEO  
9 responsibilities.

10 A. Okay.

11 Q. What are the CEO responsibilities based  
12 on your training, even though you didn't complete  
13 the training as described in Exhibit 7?

14 A. It is the manager on duty, they're  
15 responsible for wherever there needs backup, so if  
16 you need to help bag fish, if you need to help get  
17 a hamster, if you need to help get a bird, because  
18 there's only one person over in pet care. You're  
19 back up on a register because you only have one  
20 cashier. You might have to go get stock from the  
21 back because you have no stockers in the store.

22 You -- and the customer wants a  
23 particular bag of dog food and it's not on the  
24 shelf, you have to go get it. So your  
25 responsibility is to back up wherever you need it.

1 associates. We all did price audit.

2 Q. All right. And what is a price audit?

3 A. You take the gun, the pricing gun, you  
4 go out, shoot the label, and make sure it's priced  
5 correctly.

6 Q. And then the next bullet point under  
7 job functions on this third page of Exhibit 7 is  
8 merchandise movement. Were you certified during  
9 your training on merchandise movement?

10 A. We all were certified on merchandise  
11 movement.

12 Q. When you say, we all, who are you  
13 talking about?

14 A. All the managers and all the stockers  
15 and anybody who touched stock.

16 Q. So this would be, I imagine,  
17 certification on how to properly move merchandise  
18 from the loading bay in the stockroom in the back  
19 of the store out onto the customer floor, right?

20 A. I mean, they told us exactly how to  
21 stock a truck, how to move a pallet from the truck  
22 onto the floor, it was everything.

23 Q. And then the -- moving down the bullet  
24 point, we'll talk about WISE later, and the D.O.G.  
25 store reviews, under job functions. It says:



1 given direction. Because discipline always came  
2 from Jodi.

3 (DFT. EXH. 18, Letter to Kelly and  
4 Ambir from Kathy, was marked for identification.)

5 BY MR. VOSS:

6 Q. All right. Showing you a document  
7 marked as Exhibit 18, which is a typed, undated  
8 memo. Let me know if you recognize it. Do you  
9 recognize Exhibit 18?

10 A. Yes.

11 Q. Is that your typed -- is this your  
12 statement?

13 A. I typed that after talking with Jodi  
14 about the condition of our backroom. And the  
15 number of times I had to clean it myself and stock  
16 it myself and clean up their fixturing(sic) because  
17 they were unorganized.

18 Q. Okay. Let's talk about who this is  
19 directed to, this is Kelly. Who is Kelly?

20 A. Kelly was the presentation manager  
21 years ago.

22 Q. Okay. And who is Amber?

23 A. Amber is the presentation manager now,  
24 I guess.

25 Q. Was Amber an associate who reported to

1 that right?

2 A. They were responsible for working the  
3 truck. And sometimes we were scheduled that early  
4 too, it would be whoever was scheduled early before  
5 the store opened.

6 Q. Did you have any specific  
7 responsibilities as an operations manager over that  
8 process?

9 A. Over working the truck?

10 Q. Over the merchandise movement process?

11 A. No, that was -- the presentation  
12 manager and then ultimately the store manager.

13 Q. What about opening the store, what  
14 specific responsibilities did you have relative to  
15 opening the store?

16 A. Counting the money, putting the drawers  
17 out. We should shoot the holes and shoot the  
18 negatives. And get -- and key out the damages.  
19 And then help fill the holes and help work the  
20 stock that needed to be filled for that day.

21 Q. How did that initial prep work get  
22 translated into assignments for associates, is that  
23 how --

24 A. That's what this is, so it tells you  
25 every day what you have to do. So it says negative

1 journal, work hard goods, set planner, perform  
2 price changes. And although, we may have someone  
3 scheduled for 15, 20 minutes, half an hour price  
4 changes, we may get three hours worth price  
5 changes. So that means that the opening manager is  
6 going to be doing those.

7 We may get more pallets than the truck  
8 -- they estimated on the trucks, so the opening  
9 manager is going to be working stock.

10 Q. How often did that happen for you?

11 A. All the time.

12 Q. How often?

13 A. Daily.

14 Q. So you were working stock every day --

15 A. Yeah.

16 Q. -- unloading trucks?

17 A. No, we got two trucks a week, but stock  
18 gets worked every day.

19 Q. So when you say working stock, you mean  
20 taking stock from the back of the -- from the  
21 stockroom out to the sales floor?

22 A. Or we have stop stock on every row, so  
23 you work it from the top down onto the shelf where  
24 it belongs, both of those.

25 Q. So how much time would you spend daily

1 working stock?

2 A. A couple of hours.

3 Q. A couple of hours every day?

4 A. Yes.

5 Q. Okay.

6 A. In-between helping customers,  
7 in-between when you clean the store you're helping  
8 stock and put stuff back in it's right place. You  
9 do returns. So you're working stock constantly.

10 Q. Recovering the store?

11 A. Or doing returns, which is just  
12 stocking it back in its place. Recovering the  
13 store is making it look neat again.

14 Q. So you would estimate you spend a  
15 couple of hours a day during your duties as an  
16 operations manager doing stocking?

17 A. Yes.

18 Q. Of some sort?

19 A. Yes.

20 Q. Did you ever log your activities during  
21 the course of a day --

22 A. No.

23 Q. -- do you have any documentation?

24 A. No.

25 Q. Did you ever keep track of any formal

1 way, what you -- how you were spending your time?

2 A. No.

3 Q. Walk me through closing the store.

4 What your responsibilities were when closing the  
5 store?

6 A. Well, when it starts to slow down,  
7 usually just after 8 o'clock, you pull a drawer,  
8 which there's a specific thing you put into the  
9 computer, it sends all the information to your back  
10 computer. You take it and count out that money.  
11 You put \$200 back into the drawer and the rest  
12 becomes your deposit. And you do that for all of  
13 your cash registers.

14 And then you recover the store. You do  
15 the returns, you make sure all the buggies are in.  
16 You make sure people leave on time. You make sure  
17 -- and everybody who's in the store does that too,  
18 except count the money, the manager is the one who  
19 counts the money. The manager is the one who  
20 counts the money, any closing manager.

21 Q. Any other duties?

22 A. And you make sure that you help every  
23 customer until they're all gone.

24 Q. Were you responsible for resolving cash  
25 register discrepancies?

1           A.     -- and if, you know, anybody had a  
2     question, we could look it up on Fetch and as a  
3     team together, we made sure that we abided by  
4     policies.

5           Q.     And my question really to you, Ms.  
6     Shively, was: Did you feel any responsibility as  
7     the operations manager to ensure that associates  
8     were complying with the policies in the employee  
9     handbook?

10           MS. AGHASSI: Object to the form.

11           THE WITNESS: And I'm saying that I  
12     didn't take the time to read the employee handbook  
13     in the last few years.

14     BY MR. VOSS:

15           Q.     It wasn't important to you?

16           MS. AGHASSI: Object to the form.

17           THE WITNESS: I just didn't have time.

18     BY MR. VOSS:

19           Q.     And so you didn't feel it was your  
20     responsibility to ensure that associates were  
21     complying with the policies in the employee  
22     handbook because you didn't really know what they  
23     were, right?

24           MS. AGHASSI: Object to the form.

25           THE WITNESS: Well, I don't believe

1 that anyone could sit here as a manager and know  
2 exactly what's in the employee handbook without  
3 reading it.

4 BY MR. VOSS:

5 Q. And you never read it?

6 A. I didn't say I never read it. I hadn't  
7 looked at it in the last few years, that's what I  
8 said.

9 Q. But you didn't know what was in the  
10 employee handbook?

11 A. I don't believe that any manager that  
12 were to sit in this room could tell you what's in  
13 that employee handbook.

14 Q. I'm just asking you what you knew and  
15 what you did.

16 A. Okay. And I'm saying I don't remember.

17 Q. So since you didn't know what the  
18 policies were, you felt no responsibility to ensure  
19 that associates --

20 A. That's not what I said.

21 MS. AGHASSI: Objection, asked and  
22 answered several times over.

23 BY MR. VOSS:

24 Q. I'm sorry, I'm trying to understand  
25 what your testimony is, Ms. Shively.

1 stocking?

2 A. Every store manager when they are MOD,  
3 they walk the store, they do returns, they recover,  
4 they stock, they pull stock from top, they pull  
5 stock from the back.

6 Q. Okay. Well, Ms. Secor says that she  
7 spends one to two hours per month stocking  
8 merchandise. Okay, so you're different from her in  
9 that respect --

10 MS. AGHASSI: Objection, lacks  
11 foundation, speculation.

12 BY MR. VOSS:

13 Q. Right?

14 A. And so is every operations manager in  
15 this area because they all stock more than that.

16 Q. Okay. What other area managers -- what  
17 other operations managers are you talking about  
18 that in that respect?

19 A. All the ones in this district, we  
20 talked about how much stocking we did.

21 Q. Give me a name?

22 A. All of them.

23 Q. Who?

24 A. At one of the meetings, we talked about  
25 yeah -- Eric and Erin.



1 Q. Eric?

2 A. Yeah.

3 Q. What's Eric's last name?

4 A. I don't know.

5 Q. And what's Erin's last name?

6 A. I don't know.

7 Q. And so how much time did Eric spend  
8 stocking?

9 A. A lot, we have all talked about how  
10 much we've helped with trucks --

11 Q. How much does Eric spend?

12 A. I don't know.

13 Q. Do you have an idea?

14 A. How could I possibly know that?

15 Q. How can you know, right?

16 A. Right.

17 Q. Did he tell?

18 A. Yes.

19 Q. What did he tell you?

20 A. I stock a lot every day, I help  
21 stockers. We work trucks, we have to get it done  
22 by 11:00, we all have to help. We all do  
23 planograms, everybody does.

24 Q. How much stocking does Erin do?

25 A. I don't know.

1 cash register, not to be stocking shelves, and not  
2 to be pricing product?

3 A. And not to be doing planograms, not to  
4 be resetting end caps and not to be checking  
5 prices.

6 Q. Is that what she described as tasking,  
7 did she describe that for you, tasking?

8 A. That would be considered tasking.

9 Q. Right. And so she advised you that you  
10 needed to stop tasking and you need to manage the  
11 store, right?

12 A. And that was a very sudden change.

13 Q. That was a change from your  
14 perspective?

15 A. No, that was a very sudden change.

16 Q. Okay.

17 A. Because I was told to task. I was told  
18 to clean the backroom. I was told to stock. I was  
19 told to bring in -- I was scheduled at 5:00 a.m. to  
20 bring in the truck.

21 Q. Do you have any evidence or any facts  
22 that you would point to, Ms. Shively, that leads  
23 you to believe that Ms. Ryall decided to administer  
24 these -- these action plans to you because you had  
25 joined the McKee lawsuit?

1 Q. No?

2 A. This was a POG that Jodi asked me to  
3 help with. She indicated that they were inundated  
4 with planograms, she asked me to help with it. She  
5 knew I was doing it, it took two days. And it was  
6 something I always did. I always helped when they  
7 inundated with planogram.

8 Q. She states further on February 27th and  
9 28th, Kathy changed her schedule from 8:00 to 6:00  
10 to 7:00 to 5:00 without my knowledge in order to  
11 complete planner end caps and leash markdowns, even  
12 though there were two managers scheduled to do  
13 those tasks. Is that right?

14 A. I may have changed my schedule in order  
15 to help with planner end caps because she had asked  
16 me to help with that. She had asked me to help get  
17 them caught back up.

18 Q. But there were two managers to do that  
19 work, right?

20 A. There were two managers that may have  
21 been there to do other things, but not to do what I  
22 did.

23 Q. And her not staying until 6:00 p.m.  
24 left the store short-handed during the busiest  
25 hours of the day both days. Is that right?

1           A.     That we did manual labor regularly and  
2     that we worked over 40 hours.

3           Q.     And any other reason that you decided  
4     to sue your employer for overtime?

5           A.     I think that's it.

6           Q.     When you say manual labor regularly,  
7     what do you mean?

8           A.     Stocking, running the registers,  
9     cleaning the store, pulling a truck in. Getting  
10    fish, wherever back up is needed in the store.

11          Q.     And you felt that those duties:  
12    Stocking, running the registers, cleaning the  
13    stores, getting fish, unloading the truck, those  
14    were more important than your managerial  
15    responsibilities?

16                MS. AGHASSI:  Objection,  
17    mischaracterization.

18                THE WITNESS:  I never said that.

19    BY MR. VOSS:

20          Q.     So they weren't more important?

21          A.     I never said that either.

22          Q.     Well, what was the most important thing  
23    you did?

24          A.     To run -- to make sure the store ran  
25    smoothly with the team.  And do the right thing and

1 sometimes the right thing was to stock a shelf.

2 Q. And you were paid significantly more  
3 than the people who were stocking shelves, right?

4 A. Yes.

5 Q. And so from your perspective, Petsmart  
6 was paying you -- if the only thing that you were  
7 doing was stocking shelves, they could just pay you  
8 minimum wage, right?

9 MS. AGHASSI: Objection.

10 BY MR. VOSS:

11 Q. Right?

12 A. If that was the only thing I was doing.

13 Q. So you were doing other things other  
14 than stocking shelves?

15 A. Yeah.

16 Q. You were making the store run?

17 A. As we all did.

18 MS. AGHASSI: Objection,  
19 mischaracterization.

20 BY MR. VOSS:

21 Q. Sure. The most important thing you  
22 were doing is making the store run --

23 MS. AGHASSI: Objection.

24 BY MR. VOSS:

25 Q. -- is that right?

1 time you were scheduled for 11 hours a day?

2 A. It was when I working the Woodruff Road  
3 store, so five years ago, five and a half years  
4 ago.

5 Q. And is it every Christmas that you  
6 worked six days a week?

7 A. Yes.

8 Q. How long a period of time prior to  
9 Christmas was that?

10 A. It depended on how Thanksgiving and  
11 Christmas fell, it was usually two to three weeks.

12 Q. All right. And that manual labor that  
13 you testified to doing earlier, planograms,  
14 stocking, cashier, cleaning the store, putting  
15 an -- getting animals ready, stocking shelves the  
16 trucks, among other things, how much of your  
17 regular shift would you spend doing those  
18 activities?

19 A. Usually probably around four hours a  
20 day.

21 Q. And what percentage of your total time  
22 would you say you spent doing things like that?

23 A. I would guess the majority of my time  
24 was on the floor, running registers, giving breaks,  
25 stocking.